



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

# DRAFT

Date:	06/25/14	Bill No:	<a href="#">Assembly Bill 2415</a>
Tax Program:	Property	Author:	Ting
Sponsor:	Author	Code Sections:	BPC Chapter 14.5
Related Bills:	AB 1151 (Ting)	Effective Date:	01/01/15

## BILL SUMMARY

This bill requires property tax agents to register with the Secretary of State's (SOS) Office before representing taxpayers in local assessment matters with county officials.

### Summary of Amendments

Since the prior analysis, this bill was amended to prohibit property tax agents from making campaign contributions to county assessor and Board of Equalization (BOE) Member candidates.

## ANALYSIS

### CURRENT LAW

**Property Tax Agents.** Existing law does not regulate persons who represent property owners in property tax related matters.

**Board of Supervisor Members.** Existing law does not restrict members of county boards of supervisors from representing property owners in the county where they serve. With respect to assessment appeals proceedings, the law bars certain county officials and employees from representing, for compensation, applicants in the county where the official serves or the employee works.<sup>1</sup> This prohibition applies to assessment appeals board members and alternate members, assessment hearing officers, employees of clerks of the board of supervisors, assessors' office employees, and county counsel staff who either advise the assessment appeals board or who represent the assessor in assessment appeal proceedings.

The law requires certain county officials and employees to notify the assessment appeals board clerk if they file an assessment appeal application on their own behalf.<sup>2</sup> Additionally, these individuals must notify the clerk if they represent their spouse, parent, or child in an assessment appeal matter. As a conflict of interest safeguard, the county's regular assessment appeals board may not hear these appeals. Instead, a special assessment appeals board panel hears the appeal.<sup>3</sup>

**Campaign Contributions.** Existing state law does not bar campaign contributions to BOE members or county assessors. Related to campaign contributions to BOE Members, Government Code Section 15626 (the Kopp Act) provides that a BOE Member shall not participate in any adjudicatory proceeding pending before the BOE if a contribution of \$250 or more has been received from any party, participant, or agent. Any such contribution must be disclosed on the record of the proceeding.

<sup>1</sup> Revenue and Taxation Code (RTC) §1612.5.

<sup>2</sup> RTC §1612.7.

<sup>3</sup> RTC §1622.6.

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**PROPOSED LAW**

**Property Tax Agents.** Beginning April 1, 2016, this bill prohibits an unregistered property tax agent from representing taxpayers before a county official to influence an official action, as defined. Providing representation without registering is a misdemeanor.

To become a property tax agent, a person files a registration application under penalty of perjury with the SOS and pays a registration fee. Registration must be renewed every two years.<sup>4</sup> Property tax agents must affirm in the application that they read and understood the duties and prohibitions imposed by this bill. The application must also affirm that the person has not:

- Been convicted of any felony under state or federal tax laws;
- Been convicted of any other criminal offense involving dishonesty, breach of trust, or moral turpitude;
- Had the following professional licenses to practice revoked, as specified: (1) attorney, (2) certified public accountant or public accountant or (3) actuary.

**SOS Duties.** The bill requires the SOS to:

- Accept registration applications, collect fees, issue registration numbers, and process registration renewals.
- Post on its website a registered property tax agent list.
- Post and maintain on its website a list of those agents with revoked registrations or who have been issued civil fines.
- Issue cease and desist orders to persons with revoked professional licenses, felony federal or state tax law convictions, criminal convictions, or to those who intentionally provided false information on the registration application.

**Prosecuting Officials Duties.** The bill requires the Attorney General, a district attorney, or a city attorney to institute a civil action for violations of this chapter. While the courts determine the amount of any civil penalty imposed (not to exceed \$1,500 for each violation), the prosecuting office must notify the SOS of persons convicted of registration violations or engaging in prohibited activities.

**"County official"** means the county assessor, an assessment appeals board member<sup>5</sup>, an assessment hearing officer, and any other county employee within those offices whose duties are not primarily clerical or manual.

**"Influencing official action"** means representing a taxpayer as an agent in any matter before a county official by promoting, supporting, influencing, seeking modification of, opposing, or seeking delay of any official action by any means. It does not include:

- filing and submitting required county forms or communicating about those filings;
- contact between a person and a county official to ascertain a status update on a property's taxable value, pending property tax refund, or pending exemption application.

**"Official action"** means:

- Establishing a taxable value for any property subject to property taxation,

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<sup>4</sup> Chapter 14.5 "Property Tax Agents" (commencing with Section 22260) to Division 8 of the Business and Professions Code.

<sup>5</sup> This definition does not include a county board of equalization member (i.e.,) a county board of supervisors meeting as the county board of equalization. See comment #8.

including initial value, declines in value, corrections to values, and any other changes in taxable value set;

- Completing an assessment roll showing the assessed values of all property;
- Applying all legal exemptions to assessments;
- Issuing refunds; and,
- Deciding all property assessment disputes between taxpayers and a county official.

**Prohibited activities related to county officials.** Property tax agents may not:

- Make any gifts of monetary value (or act as an intermediary) to a county official;
- Represent a taxpayer before any county official without the taxpayer's authorization;
- Use threats, false accusations, duress, or coercion to attempt to influence a county official's actions;
- Offer special inducements, promise of an advantage, or bestow gifts, campaign contributions, favor, or thing of value to attempt to influence a county official's actions; or
- Do anything to place a county official under personal obligation to the agent or another person.

**Excused Persons.** Persons excused from registration as property tax agents are those:

- Representing themselves or an immediate family member;
- Representing an entity if they have an ownership interest of at least 10%;
- In-house employees representing their employer;
- Public employees or officials, including elected or appointed public officials, when acting in their official capacity as government employees or officials;
- Experts providing their opinion when accompanied with registered property tax agents or the taxpayer.

**Campaign Contributions.** Property tax agents may not make any campaign contribution to a candidate for office of the assessor or member of the BOE.

**Local Ordinance Impact.** State registration preempts and supersedes all local ordinances regarding registration of persons that communicate with county officials for the purpose of influencing official action regarding a property tax assessment. The bill doesn't prohibit counties from establishing ordinances related to reporting or prohibiting campaign contributions to elected officials.

**Board of Supervisor Members.** The bill also prohibits a county supervisor or county assessment appeals board member from acting as a property tax agent in the county where they currently serve.

#### RECENT LEGISLATIVE ACTIVITY

**AB 1151 (Ting, 2013),** similar to this bill, required property tax agents to register with the SOS. Among other provisions, the bill did not include the gift prohibition, the duties and prohibitions statement, or the local ordinance preemptive provision. In addition, the Attorney General was the enforcement officer. The bill was held in the Assembly Appropriations Committee.

**AB 404 (Gatto, 2012)** required those counties that regulate lobbying before its Board of Supervisors to require annual registration and quarterly reporting by any individual representing a taxpayer for compensation before county assessment or equalization officials. The bill also prohibited registrants from making campaign contributions to elected county assessors or candidates for the office. The bill did not pass from the Senate Floor.

**AB 2183 (Smyth, 2012)** required an agent representing a taxpayer before the assessor, a county board of equalization, or an assessment appeals board to register with the county prior to representing a taxpayer. This bill was held in the Senate Appropriations Committee.

**Joint Oversight Hearing on Property Tax Agents (2012).** On June 20, 2012, the Assembly Local Government and Revenue and Taxation Committees held a joint oversight hearing regarding [“Property Tax Agents and their Interactions with Local Governments.”](#) The committee heard testimony and recommendations from the Legislative Analyst’s Office, three assessors, and various representatives of the property tax agent community.

- [Briefing Paper](#)
- LAO Report: [Property Tax Agents at the Local Level in California: An Overview](#)

## COMMENTS

1. **Sponsor and purpose.** The author seeks to establish a uniform statewide property tax agent registration system to alleviate the need for a county-by-county system that does not create unreasonable burdens on property tax consultants or their clients. Related to the recent Los Angeles County investigations leading to multiple arrests and indictments, this bill seeks to remedy the ethical cloud that incident cast over the property tax appeals process.
2. **The June 25, 2014 amendments** add campaign contribution prohibitions. **The June 12, 2014 amendments** made it a misdemeanor to intentionally provide false information in registration documents and modified procedures related to SOS-issued cease and desist orders. **The May 23, 2014 amendments** (1) required the Attorney General, district attorneys, and city attorneys to enforce its provisions rather than the SOS, (2) deleted SOS-conducted background checks and instead allow agents to state that they are not prohibited persons, (3) limited the types of inquiries considered to be influencing official action, (4) allowed experts to provide opinions without registration if accompanied by the taxpayer or a registered agent, and (5) delayed registration requirements to April 1, 2016.
3. **Los Angeles County Registration.** On April 30, 2013, the Los Angeles County Board of Supervisors adopted County Code 2.165, an ordinance to implement a [Tax Agent Registration Program](#) within Los Angeles County. Over 1,200 persons have already registered. No other county has imposed tax agent registration provisions.
4. **Existing state law does not require tax agents to register with any jurisdiction.** Supporters are concerned that absent legislation that enacts statewide registration and preempts local ordinances, other counties might enact similar ordinances requiring tax agents to register in multiple counties. A state-run system would eliminate any future duplicative efforts to register agents, collect registration fees, and issue registration numbers. Also, a state registration system allows tax agents to pay one fee to operate in multiple counties. Proponents note that a state system will aid enforcement by preventing tax agents from conducting business in a neighboring county if they run afoul of one county’s ordinance.

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5. **Some states regulate property tax consultants.** [Texas](#) requires agents to pass an exam, complete pre-licensing education, and take continuing education. [Tennessee](#) requires an exam, and has education and experience requirements. [Arizona](#) requires persons to register and bars persons convicted of certain crimes in the last 10 years.
6. **Website publication of names of tax agents.** The bill requires the SOS to list all tax agents on their website. Unlike lobbyists that register with the SOS and publicly disclose their clients on the SOS website, public disclosure of the tax agent's clients is not required.
7. **Technical amendment needed.** The June 25, 2014 amendment that relocated (from Section 22260.2 to subdivision (i) of Section 22260.6) and reworded the provision that prohibits county supervisions or assessment appeals members from acting as a tax agent in the county they currently serve is missing an "or". At page 8, line 10, "is" should be inserted.

Section 22260.6 (i) Act as a Property Tax Agent in a county in which he or she serves as a county supervisor or as a member of the assessment appeals board.
8. **There is ambiguity over whether members of the Board of Supervisors sitting as the county board of equalization would be considered "county officials."** In 19 counties, the Board of Supervisors sits as the county board of equalization. The definition of "county official" only includes assessment appeal board members. Revenue and Taxation Code Section 1601 provides that "county board" means a county board of supervisors meeting as a county board of equalization or an assessment appeals board. This bill does not use the term "county board" which would encompass members of both types of boards.
9. **Tax agent campaign contribution prohibition.** This bill prohibits campaign contributions to candidates for county assessor in all counties and to BOE Members. However, the bill does not prohibit campaign contributions to candidates for the County Board of Supervisors, and this body sits as the County Board of Equalization in 19 counties.
10. **Ambiguity in prohibition against contributions to sitting BOE Members.** There is some ambiguity in the language regarding whether contributions to sitting BOE members are prohibited. For example, would a tax agent be able to make a campaign contribution to a BOE Member who is a candidate for another office, such as the Controller or an Assembly seat? Would campaign contributions be permitted to a BOE Member in their second term and thus prohibited by term limits from being a candidate? The same ambiguity exists for sitting assessors accepting campaign contributions for another office.
11. **County ordinances related to campaign contributions.** This bill includes a provision that it shall not be construed to prohibit a county from enacting property tax agent reporting requirements for campaign contributions to elected officials in that county or prohibiting such campaign contributions.
12. **Los Angeles' county ordinance.** Los Angeles County has enacted Chapter 2.190 of the Los Angeles Code to prohibit campaign contributions by tax agents to the Assessor or any candidate for assessor. In addition, tax agents must disclose all campaign contributions made by the tax agent to any elected official or candidate for elected official in any jurisdiction within Los Angeles County.

**COST ESTIMATE**

The BOE's administrative costs would be absorbable.

**REVENUE ESTIMATE**

This measure does not impact state or local revenues.

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